

Mark Duncan Chairman San Juan Water Commission  
San Juan County, New Mexico  
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Chairmen, and Senators, I am Mark Duncan, Chairman of the San Juan Water Commission in New Mexico. Today I seek your support for S. 1771, the Colorado Ute Settlement Act Amendments of 1998. Senators, the Commission has valued the leadership you have provided for the development of our New Mexico resources represented by the Animas La Plata Project. Ali have recognized the cooperative rather than combative effort by the Tribes, Colorado and New Mexico, and the local water agencies to resolve by negotiation rather than litigation our competing needs for stable water supplies. Everyone benefits by working together, the cooperation has enabled us to serve the best interests of the region while preserving the environment and allowing for economic and cultural growth.

In 1986, the New Mexico entities supplying domestic water to San Juan County formed the San Juan Water Commission. The Cities of Aztec, Bloomfield and Farmington, the San Juan County Rural Water Users and San Juan County recognized the water needs of New Mexicans would be served by securing the New Mexico water dedicated to the Animas-La Plata Project.

**NEW MEXICO NEEDS AN ASSURED WATER SUPPLY**

The need for the ALP - revised or original - is clearly summed up in one fact - the San Juan Water Commission entities are today using the water allocated for the ALP, Almost all of the 14 member entities are taking water under these state permits, which were issued in 1996, for the ALP water supply. All of the entities, except Farmington, could be struggling to obtain enough water now if it weren't for the ALP supply. The Repayment Contract between the SJWC and the Bureau of Reclamation, and the 1996 diversion permits from the State of Now Mexico allow the Commission's member entities to take water from the natural flow in the Animas River, as long as it is available. But of course, the trouble is that when we have another drought, a water year like 1977 or even a year like 1996, there will not be water for the towns and rural associations to take. The situation will only get worse as San Juan County - now about 110,000 people - continues to grow. Starting In 2035, in a dry year, we would be out of a physical wet water supply by early June, and the shortage could continue until October.

That's why we need the storage facility that the ALP will provide. Ridges Basin, the ALP site, Is the best site remaining in the San Juan Basin. Any other site could be more damaging environmentally and lose more New Mexico water by evaporation. To build equivalent storage in New Mexico would require development of at least three sites. The three identified will not provide as much storage for any future water storage expansion needs. Further we would consume 5077 AFY (acre feet per year) of our 10,400 AF (acre feet) of depletions as evaporation! In Ridges Basin, the New Mexico water share requires less than 500 AF for evaporation and is accounted for in a separate joint allocation among the supporters of this legislation. Our construction cost estimates for the three sk-a range from \$180 million to \$240 million.

The Revised ALP will give New Mexico enough depletions, 10,400 af, to meet our Immediate direct flow needs. It will also provide the Commission's estimated New Mexico non-Indian storage needs of 9,400 of in the extremely dry year (1996 Final Supplement to the Final Environmental Statement, Appendix A).

### **S. 1771 MEETS TRIBAL PROMISE**

The second compelling reason for supporting the Revised ALP Is that it settles the Ute Indian claims on the Animas and La Plata Rivers. This is very important to New Mexico, from the La Plata irrigators, who will be assured of their current water rights, to the entire state of New Mexico, which needs Animas water to have any hope of fully developing its allocation of Colorado River water under the Upper Colorado River Compact. It is an important safeguard for other water in New Mexico, notably the San Juan-Chama water, which is promised to the Jicarilla Apache Indian Tribe and the pueblos, town and cities of the Rio Grande corridor, including the City of Albuquerque.

The Navajo Nation will benefit under the Revised ALP, even more so, when the requested changes are added. The Navajo Nation community of Shiprock needs and will receive depletion of 2,340 afy from this proposed revision. The change proposed adding an authorization for an augmentation water line for Shiprock's increasing municipal demand is essential for the Navajo Nation's Increasing self reliance.

More Important, we hope that the revised project Will allow the Navajo Nation to continue in its effort with New Mexico to quantify and settle b water claims. From a practical point of view, all of us here today, must honor and complete the Ute Indian Water Rights Settlement if we expect to reach settlement of the Navajo Nation claims. if the Congressionally approved Ute settlement cannot be fulfilled, what incentive does the Navajo Nation have to continue negotiations? None, and I cannot blame them, either, for being skeptical!

### **PROPOSED NEW MEXICO/NAVAJO NATION AMENDMENTS**

The Commission asks the following language be substituted In S. 1771 as follows. §3 (e) (i) of S. 1771 Is amended to read:

" (i) New Mexico and Navajo Nation Water Matters

1. *Assignment of Water Permit - Upon request of the State Engineer of the State of New Mexico, the Secretary shall in a manner, consistent with the applicable State Law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or the New Mexico Interstate Stream Commission any portion of the Department of the Interior's interest In New Mexico Engineer permit number 2883, dated May 1, 1956, in order to fulfill the New Mexico purposes of the Animes-La Plate Project, provided that this permit assignment shall not effect the application of the Endangered Species Act to the use of the water*
2. *Navajo Nation Municipal Pipeline - After the date of enactment of the Colorado Ute*

*Settlement Act Amendments of 1998, the Secretary shall provide for the construction of a waterline to augment the existing antiquated system that conveys municipal water supplies of the Navajo Nation from Farmington, New Mexico, to the Navajo Indian Reservation at Shiprock, New Mexico. Prior to such construction, the Secretary shall initiate and complete appropriate environmental compliance with respect to the Navajo Nation municipal pipeline. Construction costs allocated to the Navajo Nation for the Navajo Nation Municipal Pipeline shall be non reimbursable.*

3. *Protection of Navajo Water Claims - Nothing in this Act shall be construed in any way to quantify or otherwise adversely affect the water rights and the claims of entitlement to water of the Navajo Nation."*

Since the legislation was introduced in March, other interested parties have reviewed it, as have we, and a few improvements could be made to the language. The basic intent is exactly the same, but as you know, when you are very close to something like legislation, you often do not see all the ramifications yourself. We believe the amendments will clarify the legislation and more accurately reflect what we intended:

The changes in section (i)(1) relating to the "assignment" of the New Mexico water permits. Instead of the "transfer" of the permit were made after consultation with the New Mexico's State Engineer's Office, The changes more closely track the state statute relating to changing the ownership of a permit, NMSA 1978 Sec. 72-5-22 (1977 Replacement Pamphlet). Other changes in that paragraph more accurately identify the permit itself, which was suggested by the State Engineer.

The paragraph dealing with the Navajo Nation Municipal Pipeline was added to reflect the needs of the Shiprock community for a new pipeline to utilize the Navajo Nation's ALP water.

The paragraph that is now the third paragraph has been included to make clear that this Act is not intended to affect or bar the water claims of the Navajo Nation.

Subsection (4) of section (b) should also be changed to clarify that the only depletions the ALP beneficiaries would have a say over would be the depletions intended for the Animas-La Plata Project. The beneficiaries would not presume to control depletions in the system that are intended for other water-short projects as a result of limitation imposed by the U.S. Fish & Wildlife Service such as the Jicarilla Apache Tribe settlement and the Navajo Indian Irrigation Project

### **BRINGING AN END TO DECADE OF CONTROVERSY**

In January of 1991, the citizens of San Juan County spoke clearly supporting the Animas La Plata Project - they voted overwhelmingly in favor, 8 to 5, of San Juan County participation. The original ALP represented the best way to provide the water storage needed in the dry seasons and years in an economically and environmentally responsible way. However, times have changed and we have had to propose a Revised ALP. Today we, the beneficiaries, have forged this compromise that both becomes a key part of the settlement of Ute claims and benefits all non-

Indians in the San Juan Basin. Both the original Congressionally authorized ALP water project and the Revised ALP being considered today help meet our urgent New Mexico water supply needs.

When the ALP Project was originally conceived, Irrigation was the dominant purpose, not municipal and industrial (M&I) use. In 1979, when the Bureau of Reclamation (BOR) expanded M&I water uses in the Project in its Definite Plan Report, the San Juan Water Commission did not exist. Now we exist, and our mission is to meet the needs identified for wet water supplies. The San Juan Water Commission represents the beneficial users of the New Mexico M&I water. In addition to construction of the storage facility, other essential items in this legislation will help serve the water users of San Juan County. The legislation requires that the interests in state water permits held for the New Mexico beneficial users by the Department of Interior be assigned, upon the request of New Mexico, to those who will beneficially use the water. This permit assignment will place the New Mexico entities on a footing similar to that of Colorado entities. Now Mexicans are dependent upon the ALP permits for current water use, and they are demonstrably needed by all but one entity. It simply makes sense to return the ALP permit itself to the State of New Mexico and more directly to the people who will actually use the water.

Further, in the legislation we seek an acknowledgment of the mountains of existing environmental and cultural resources work already done for the full ALP can be used for the Revised ALP so time and money are not wasted. The American Taxpayer must receive maximum value out of the \$50 million invested in these studies. Our request is that the Bureau of Reclamation be allowed to construct the facilities, in compliance with the ESA, that the U.S. Fish & Wildlife Service approved. Under the Revised ALP, New Mexico will share in the use of all the facilities that are planned - the inlet and outlet conduits, the pumping station, and the reservoir itself. The characteristics and cost of these facilities are outlined in the April 1996 Final Supplement to the Final Environmental Statement. These are the same facilities described and approved for use in the 1991 and 1996 U.S. Fish & Wildlife Service Biological Opinions. These facilities are more fully described as Stage A, Phase 1 with a reduction in reservoir size and an increase in pumping capacity to better utilize the flood water in spring, thereby avoiding conflicts in dry years with downstream senior rights. We have complied with the ESA and other federal requirements every step of the way, and now we are simply asking recognition of that fact.

A little history may help illustrate my point. In 1980, the U.S. Fish & Wildlife Service found that the fish were not jeopardized by the ALP as proposed. Then in 1990, the Service changed its opinion, and we, along with the other supporters, including those other San Juan Basin water development interests and the States, sat down and worked to find a reasonable and prudent alternative to jeopardizing the fish. We could have simply taken actions to avoid further jeopardy, and get the project back on track but instead we took a major additional step which will enable our children to realize the full benefit of their New Mexico water resources. Thus, we have made recovery one of the goals of the Recovery Program in the San Juan Basin, going beyond the lesser legal target of "no jeopardy." In this process to develop a recovery plan, we encouraged all the stakeholders and interested parties to participate. The environmentalists chose to not participate and issued a formal letter declining the invitation. The efforts to recover the fish have led to delays, but at least we now understand more than we did before about the

potential effects of the project. With that understanding, my fellow ALP participants and my Commission deliberately decided to use the extensive biological and environmental material for the original project to develop the revised project represented by this amendment

Opponents have claimed the ALP will destroy the Animas River and the small agricultural irrigation that exists. In fact, the revised project will use, only 14% of the almost 600,000 acre feet average annual flow. The great bulk of pumping will occur during the high flow months May to June, thereby not endangering the downstream agricultural or M & I needs.

In closing, the San Juan Water Commission is charged with securing stable water supplies for 110,000 New Mexicans. We have compromised and sacrificed in the best interest of the Four Corners Region. The Commission looked during the Romer/Schoettler process, and found no alternative water supply that met our's and our neighbors' needs more economically or that complied with the enormous federal, state and local requirements. Now is the time to start ALP construction. 1998 is predicted to be a "dry" year. If this storage project does not go forward. where will the wet water for *our* New Mexico Communities be obtained? Keep the federal promise to the Tribes, the States of Colorado and New Mexico, and the Nation, and build the Revised ALP.

Mark Duncan, Chairman San Juan Water Commission